REMARKS

Claims 1 to 9 as set forth in Appendix IV of this paper are now pending in this case. Claims 1 and 5 to 8 have been amended, and Claim 9 has been added as indicated in Appendix III of this paper.

Accordingly, applicants have made some editorial changes in the language of Claims 1 and 5 to 8. Additionally, Claim 1 has been amended to set forth the amount of carbon atoms in the hydrocarbon radicals mentioned in the definition of R^2 and L^1 et seq., and to recite the radicals which are suitable as optional substituents, in accordance with the disclosure on page 4, indicated lines 4 to 19, of the application. No new matter has been added.

Further, applicants have revised the abstract to set forth the definition of the variables in formula (I) instead of the reference to the specification. It is therefore respectfully requested that the Examiner's respective objection be withdrawn.

The Examiner has objected to the oath as being defective. It is respectfully noted that the Examiner's remarks in the objection, together with the remarks on the claim under 35 U.S.C. §119(e) appear to indicate that the respective papers were inadvertently confused with papers submitted in this case which relate to the parent of this application. For the sake of clarity, the following is therefore provided:

The present application is a divisional application of application Serial No. 09/272,916, which was filed on March 19, 1999 (*ie. No. 15 of applicants' Transmittal under 37 C.F.R. §1.53(b)*). The parent application has meanwhile matured into U.S. Patent No. 6,255,309 (*dated July 03, 2001*). Said parent case claims the benefit of the earlier filed international application PCT/US 98/05615[1]). The present case which is filed pursuant to the provisions of 35 U.S.C. §120 claims the benefits of the parent case under that section of the Patent Act. For the Examiner's convenience, applicants have enclosed herewith a copy of the Petition pursuant to Rule 47(a) which applicants submitted on September 09, 2002 (*date of the Certificate of Mailing*), and which includes a copy of the combined Declaration and Power of Attorney document of this application.

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1) Applicants have meanwhile submitted a Petition, along with certified copies of PCT/EP 98/05615, in U.S. 6,255,309 to have the claim to priority corrected.

It is also respectfully noted in this context that the Power of Attorney indicated in the document appended to applicants' petition has meanwhile been revoked and the undersigned's offices have been entrusted with the representation of this application as evidenced by the enclosed copy of the Power of Attorney by Assignee of Entire Interest (Revocation of Prior Powers) letter previously submitted in this application.

The Examiner has rejected Claims 1 to 8 under 35 U.S.C. §102(e) as being anticipated by the subject matter disclosed by ***Pfrengle*** in ***US 5,981,534***, which is entitled to the U.S. filing date of September 25, 1998. Favorable reconsideration of the Examiner's position is respectfully solicited in light of applicants' petition in the parent of this application to correct the claim to priority. Pending that applicants' petition is granted, the present application enjoys the benefit of the earliest effective filing date to which the parent case is entitled, namely the filing date of PCT/US 98/06516 (*March 23, 1998*) and the filing date of US Serial No. 08/843,323 (*April 14, 1997*) the priority of which is claimed in PCT/US 98/06516. Favorable action is solicited.

The Examiner has further rejected Claims 1 to 8 under the judicially created doctrine of obviousness-type double patenting as being unpatentable in light of

(a) ***US 6,284,762*** **(Pfrengle)**;

(b) ***US 5,981,534*** **(Pfrengle)**;

(c) ***US 6,204,269*** **(Pfrengle et al.)**; and

(d) ***US 6,255,309*** **(Pees et al.)**.

Applicants herewith enclose copies of Terminal Disclaimer which applicants have submitted in the U.S. patents to ***Pfrengle*** (*items (a) and (b)*). Additionally, applicants herewith submit a Terminal Disclaimer concerning the U.S. patent to ***Pfrengle et al.*** (*item (c)*), and Terminal Disclaimer concerning the U.S. patent to ***Pees et al.*** (*item (d)*). Withdrawal of the double patenting rejections is therefore respectfully solicited.

The Examiner has rejected Claims 1 to 4 and 6 to 8 under 35 U.S.C. §112, ¶2, for failing to specify the nature of the optional

substituents referred to in the definition of R^2, and for referring to a *"free of complexed"* metal atom in the definition of M. Favorable reconsideration of the Examiner's position and withdrawal of the Examiner's rejection is respectfully solicited in light of applicants' amendment which introduces a definition of the optional substituents, and which removes the wording *"free of complexed"*.

REQUEST FOR EXTENSION OF TIME:

It is respectfully requested that a *two* month extension of time be granted in this case. A check for the *$410.00* fee is attached.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,
KEIL & WEINKAUF

/HBKeil

Herbert B. Keil
Reg. No. 18,967

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Washington, D.C. 20036
(202) 659-0100

Encl.: THE SUBSTITUTE ABSTRACT (Appendix I)
THE CHANGES IN THE ABSTRACT (Appendix II)
THE CHANGES IN THE CLAIMS (Appendix III)
THE AMENDED CLAIMS (Appendix IV)
Petition dated September 09, 2002
Power of Attorney ... letter
Terminal Disclaimer submitted in US 5,981,534 (copy)
Terminal Disclaimer submitted in US 6,204, 269 (copy)
Terminal Disclaimer concerning US 6,255,309
Terminal Disclaimer concerning US 6,284,762

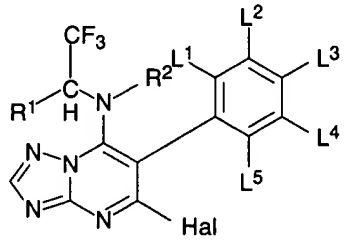
HBK/BAS

APPENDIX I:

THE SUBSTITUTE ABSTRACT (clean copy):

ABSTRACT OF THE INVENTION

The novel compounds of formula I:



(I)

wherein

R^1 is hydrogen or methyl;

R^2 is hydrogen, or an optionally substituted alkyl, alkenyl, alkynyl, alkadienyl or phenyl group;

Hal is halogen; and

L^1 through L^5 are each hydrogen, halogen, alkyl, alkoxy or nitro, provided that at least one of L^1 through L^5 represents nitro or alkoxy;

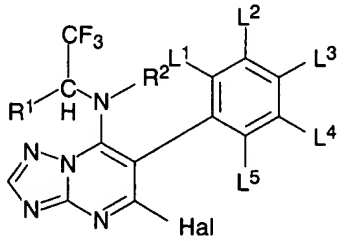
show selective fungicidal activity. The new compounds are processed with carriers and adjuvants to fungicidal compositions.

APPENDIX II:

THE CHANGE(S) IN THE ABSTRACT (version with markings showing the changes):

ABSTRACT OF THE INVENTION

The novel compounds of formula I:



(I)

wherein [~~(R¹, R², Hal and L¹ through L⁵ are defined in the specification)~~]

R^1 is hydrogen or methyl;

R^2 is hydrogen, or an optionally substituted alkyl, alkenyl, alkynyl, alkadienyl or phenyl group;

Hal is halogen; and

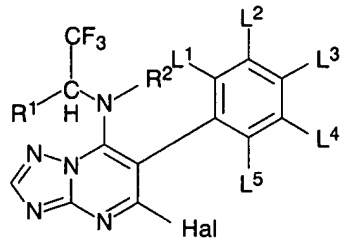
L^1 through L^5 are each hydrogen, halogen, alkyl, alkoxy or nitro, provided that at least one of L^1 through L^5 represents nitro or alkoxy;

show selective fungicidal activity. The new compounds are processed with carriers and adjuvants to fungicidal compositions.

APPENDIX III:

THE CHANGES IN THE CLAIMS (version with markings, showing the changes made):

1. (*amended*) A compound of formula I



(I)

in which

R^1 represents a hydrogen or a methyl group;

R^2 represents a hydrogen atom or an optionally substituted C_1-C_{10}-alkyl, C_2-C_{10}-alkenyl, C_2-C_{10}-alkynyl, C_4-C_{10}-alkadienyl or phenyl group, wherein the optional substituents are selected from the group consisting of nitro, cyano, C_3-C_6-cycloalkyl, C_3-C_6-cycloalkenyl, C_1-C_6-haloalkyl, C_3-C_6-halocycloalkyl, C_1-C_6-alkoxy, C_1-C_6-haloalkoxy, tri-C_1-C_4-alkylsilyl, phenyl, halophenyl, dihalophenyl and pyridyl;

Hal represents a halogen atom; and

L^1 through L^5 each represent [~~an~~] a hydrogen or halogen atom or an C_1-C_{10}-alkyl, C_1-C_{10}-alkoxy or nitro group, provided that at least one of L^1 through L^5 represents a nitro or alkoxy group.

5. (*amended*) The [~~following compounds~~] compound of formula [~~1+~~] I defined in claim 1 which is selected from the group consisting of

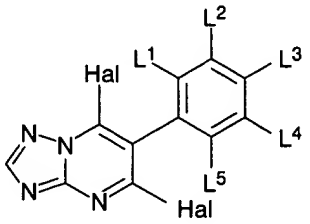
5-chloro-6-(4-methoxyphenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,-4]triazolo[1,5-a]pyrimidine;

5-chloro-6-(4-nitrophenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,4]-triazolo[1,5-a]pyrimidine; and[~~,~~]

5-chloro-6-(2,6-difluoro-4-methoxyphenyl)-7-[2-(1,1,1-trifluoro)-propyl)amino]-[1,2,4]triazolo[1,5-a]pyrimidine[~~+~~].

6. (*amended*) A process for the preparation of a compound of formula I as defined in claim 1, which process comprises:

treating a compound of formula II

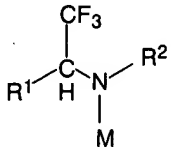


(II)

[~~in which~~]

[~~L^1 through L^5 and Hal are as defined in claim 1,~~]

with an amine of formula III



(III)

in which

[~~R^1 and R^2 are as defined in claim 1,~~]

M represents a hydrogen atom or a [~~free or complexed~~] metal atom,

to produce [~~a~~] the compound of formula I.

7. (*amended*) A fungicidal composition which comprises a carrier, and as active agent, at least one compound of formula [~~1~~] I as defined in claim 1.

8. (*amended*) A method of combating fungus at a locus which comprises treating the locus with a fungicidally effective amount of a compound of formula [~~1~~] I as defined in claim 1.

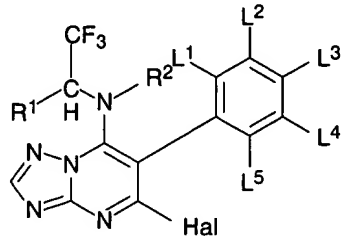
Claim 9 has been added.

9. (*new*) The process od claim 6 wherein the metal atom represented by M is selected from the group consisting of Li, Na, K, Zn and Cu.

APPENDIX IV:

THE AMENDED CLAIMS (clean version of *all* claims):

1. (*amended*) A compound of formula I



(I)

B2

in which

R^1 represents a hydrogen or a methyl group;

R^2 represents a hydrogen atom or an optionally substituted C_1-C_{10}-alkyl, C_2-C_{10}-alkenyl, C_2-C_{10}-alkynyl, C_4-C_{10}-alkadienyl or phenyl group, wherein the optional substituents are selected from the group consisting of nitro, cyano, C_3-C_6-cycloalkyl, C_3-C_6-cycloalkenyl, C_1-C_6-haloalkyl, C_3-C_6-halocycloalkyl, C_1-C_6-alkoxy, C_1-C_6-haloalkoxy, tri-C_1-C_4-alkylsilyl, phenyl, halophenyl, dihalophenyl and pyridyl;

Hal represents a halogen atom; and

L^1 through L^5 each represent a hydrogen or halogen atom or an C_1-C_{10}-alkyl, C_1-C_{10}-alkoxy or nitro group, provided that at least one of L^1 through L^5 represents a nitro or alkoxy group.

2. A compound according to claim 1 in which at least one of L^1 and L^5 represents a halogen atom.

3. A compound according to claim 1 in which R^2 represents a hydrogen or a C_{1-10} alkyl group.

4. A compound according to claim 1 in which at least one of R^1 and R^2 represents a hydrogen atom.

5. (*amended*) The compound of formula I defined in claim 1 which is selected from the group consisting of

B3

5-chloro-6-(4-methoxyphenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,-4]triazolo[1,5-a]pyrimidine;

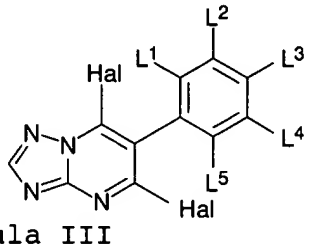
5-chloro-6-(4-nitrophenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,4]-triazolo[1,5-a]pyrimidine; and

5-chloro-6-(2,6-difluoro-4-methoxyphenyl)-7-[2-(1,1,1-trifluoro)-propyl)amino]-[1,2,4]triazolo[1,5-a]pyrimidine.

6. (*amended*) A process for the preparation of a compound of formula I as defined in claim 1, which process comprises:

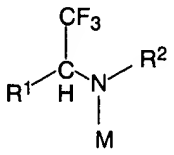
treating a compound of formula II

B3



(II)

with an amine of formula III



(III)

in which M represents a hydrogen atom or a metal atom,

to produce the compound of formula I.

7. (*amended*) A fungicidal composition which comprises a carrier, and as active agent, at least one compound of formula I as defined in claim 1.

8. (*amended*) A method of combating fungus at a locus which comprises treating the locus with a fungicidally effective amount of a compound of formula I as defined in claim 1.

B4

9. (*new*) The process od claim 6 wherein the metal atom represented by M is selected from the group consisting of Li, Na, K, Zn and Cu.